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ABSTRACT

Court trials are formalized disputes in which the parties are denied confrontation and have restrictions placed on their rights to tell the story. The rights of telling are part of discourse rights, and in the courtroom they are circumscribed by attorneys' objections to either the other attorneys' questions or the witnesses' answers. This can be seen in the record of conduct of a three-hour misdemeanor trial in which 32 objections were voiced. The record indicates that most witnesses are not prepared for the degree to which their discourse rights will be abrogated in a courtroom, and the orderliness of a witness' story can be disrupted, restricted, or halted by any of three managers of his story: his own attorney, the opposing attorney, or the Court. In this trial, the witness whose testimony was the longest and was disrupted the least was a newly graduated law student prepared for the manner in which her discourse rights were to be abrogated. If a trial is a conflict between two narratives, each vying for ratification as true, it is the business of each attorney to make his storytellers as believable as possible. Witnesses who know the rules of courtroom talk can say the same set of facts in a very different way and be much more persuasive in court. (MSE)

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DISCOURSE RIGHTS OF WITNESSES: THEIR CIRCUMSCRIPTION IN TRIAL

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DISCOURSE RIGHTS OF WITNESSES:
THEIR CIRCUMSCRIPTION IN TRIAL

Anne Graffam Walker

Introduction. In a sense, a courtroom trial is simply the structured telling of a story for reasons other than to entertain. It is a cooperatively told narrative, a recapitulation of past experience, told sequentially with the intent of persuasion, having a beginning (opening statements), a middle (presentation of evidence), an end (closing arguments), and in Labovian terms, a coda (the verdict) [Labov 1972]. Marked throughout by evaluation, the story belongs to the principal parties - the plaintiff and defendant, and most especially it belongs to the plaintiff, whose reason for wanting the story told is the reason for having the trial at all.

But while the trial can be seen as a narrative, it is more than that. It is a narrative-in-pair, in which two versions of reality conflict, each version hoping for ratification as true. In other words, a trial is a dispute in process of resolution. It is, further, a process carried on at society's highest level of formalization, begun, conducted, and ended subject to bodies

of rules both written and unwritten, in the formal surrounds of a courtroom, presided over by a costumed figure of power at whose entrance into and departure from the arena participants must rise. It is a dispute so formalized that the very parties whose stories are to be heard are denied the proprietary primal right of confrontation. While they retain ownership of their stories, they must give their management over into the hands of sanctioned second parties (lawyers) who present them in ritual ways to third parties (judges and/or juries) for hearing. They are forced, in other words, to hold themselves at a remove not only from their stories and those with whom they are in conflict, but because of the context of the dispute, even their rights of telling are restricted. These rights of telling are part of what I call discourse rights, and during the course of a trial, circumscription of those rights, I suggest, appears in the form of objections made by attorneys to either each other's questions, or to the witness's answers.

I have used the term discourse rights, by which I do not mean to suggest the constitutionally guaranteed right (singular) of free speech, or the right to <u>have</u>

discourse; rather, I intend the term to mean the psychologically perceived rights (plural) in discourse: that is, the rights speakers have to make choices about forms discourse will take, choices about ways to carry on a conversation. Some of those choices to be addressed in this paper revolve around how to tell a story, and include the three choices to 1) report what other people in the story have said, 2) to characterize both people and events, and of course, 3) to set the scene for the listener. Labov [1972] calls these things complicating action, evaluation, and orientation, respectively. The law, however, calls them hearsay, opinion, and not being responsive to the question, and each gives rise to objection.

Therefore, while a speaker's rights of telling are many and varied, a witness's are not, and in this paper I will concentrate on only those discourse rights of witnesses whose abrogations appear as objections in the record of the conduct of an actual trial. After first outlining my data source, I will discuss briefly some of the facts about the structure of discourse which are pertinent to this study, and will then present my findings. Finally, I will touch upon some possible implications of these findings to the field of law.

Data Base. The trial in question was a three hour and fifteen minute proceeding held in a General District Court (a lower-level jurisdiction) which involved two criminal indictments being heard at the same time: a misdemeanor, and a felony. The felony indictment was dismissed near the beginning of the hearing, and the remainder of the time was devoted to adjudication of the misdemeanor charge. It was a non-jury trial, meaning that the judge had to decide what was and what was not a fact as well as to apply the law to those facts.

As a microcosm of so-called 'bench' trials, it was nearly complete, with opening and closing arguments by both sides, direct and cross examination of eight witnesses including the defendant, argument to the Court (judge) on motions, and numerous rulings by the Court on objections. Since it was an action brought by the State, the plaintiff was in a sense abstract, a representation by means of the prosecuting attorney of the concensus of society's formulations of sanctioned social behaviour. The defendant on the misdemeanor charge was a young woman accused, in part, of "act[ing] in a disorderly manner with the intent to cause a public inconvenience, annoyance or alarm or recklessly creating a

risk thereof ..." [Data 8:2-5]

The circumstances, altered somewhat for purposes of anonymity, which led to the defendant's arrest began when as a guest in a hotel, she had seen a bug on a dining room plate of food. When no satisfactory remedy was offered her by the management, she went from table to table, warning guests not to eat their dinners. Her actions, the State contended, resulted in injury to a bystander, who then swore out the warrant that led to the trial. As one of two court reporters present at that hearing, I reported the proceedings by means of both stenotype and Sony tapes, and subsequently typed a transcript from my notes. That 128-page transcript, plus interviews with the presiding judge, both attorneys, and two witnesses, viewed within the framework of my general experience in legal proceedings, form the data for this study.

Structuring of Discourse. Speakers choose their discourse techniques based on cultural notions of conversation in general. Of those notions, the ones pertinent to this discussion relate to the structure of talk itself, situational influences, and the personal choices

available to each speaker. Structural characteristics of exchanging speech have been extensively investigated by ethnomethodologists such as Sacks, Schegloff and Jefferson [1978] whose research demonstrates that for American English speakers in general, speaking is organized by turns (A speaks, B speaks, A speaks again, et cetera) and that one party talks at a time.

That there are levels of organization of turn-taking is evidenced by the fact that competent speakers make a distinction between behaviour expected in conversation in general, in which turns are allocated singly and self-selection can and does occur, and behaviour expected in an interview situation in which turn-selection is the acknowledged province of the questioner.

The mechanism by which an exchange of speech is recognized to be, in Austinian terms, felicitous, is that of Grice's Cooperative Principle, in which utterances are expected to conform to Gricean maxims of Quantity, Quality, Relation, and Manner [Grice 1967]. For one's contribution to make sense, then, it is optimally expected to be as informative (and only so) as is necessary, spoken in truth, relevant to the immediately preceding offering, and clear, brief, and orderly.

Discourse techniques utilized by speakers also recognize the influence of situation upon language. As Labov [1966], Rubin [1968], Blom and Gumperz [1972] and others have shown, the more formal the situation, the more formal the language. Associated with situational formality is the degree of intimacy perceived by the speaker to his hearer, and in a study of conversational style, Robin Lakoff suggests that there are strategies available to discoursants based on this relationship [Lakoff 1979].

There is a further fact about discourse not generally addressed in the literature which includes a number of expectations of speakers that fall by and large under what I will call Initiator Rights. Those are the simple rights to choose the time, place, and partner of conversation; to open, maintain, or close encounters; to choose physical movement toward or away from the hearer; to choose the medium of exchange: speech or gesture; and finally, to chose the topic. These Initiator Rights operate with varying degrees of power depending, of course, upon the social factors of situation and relative participant status already mentioned, plus certain other of the constellation of speech features noted in Hymes' sociolinguistic model of communication for which he uses

the acronym SPEAKING [Hymes 1972:59]. Applicable in triggering Initiator Rights are E: ends (purpose of the discourse); K: key, or the "tone, manner or spirit in which the act is done" [62]; and those aspects of G: genre, which are identifiable as oral rather than written (testimony in a trial as opposed to a written legal brief). Options, then, to utilize Initiator Rights are a function of the speaker's perception of situation, but the awareness that they exist is, I suggest, basic to discourse structuring.

Another intuitive notion all competent speakers have about language, one which straddles borders of lexicon, syntax and pragmatics, is that talk need not be dull. Adjectives and adverbs exist in bountiful paradigms; a thought need not be expressed by an unalterable order of words, nor in an unalterable form. If, for example, a question can do the work of a command, then there are choices about how to express an idea. All of these availabilities are features of conversational style which I think of as characterization, and they are essential ingredients of an additional component of style noted, among others, by Tannen [in press], that of storytelling, or use of narratives by the speaker.

All of this body of knowledge about discourse and its attendant rights is, I suggest, available to all competent persons who enter a courtroom as witnesses. What is not generally available is the knowledge of how those discourse rights are about to be abrogated, indeed, must be abrogated, if the process of dispute resolution under our present system is to proceed smoothly. The effects on trial procedure of that lack of knowledge by the witness about the change in what he understands to be general ground rules for talk form the focus of the discussion to follow.

Discourse Rights in Violation. Change in ground rules begins before the witness ever takes the stand, for he has no choice about having this "talk" at all. When General Speaker becomes Courtroom Witness, should he not show up at his appointed time to give his testimony to the questioner, he is subject to severe sanction, including loss of freedom. Once on the stand, he may not leave it without the Court's permission. Always in the position of responder, he may make neither the first utterance not the last. In fact, the close of the encounter is signified by some variation of "I have no further questions of this witness, Your Honor" -- a dismissal by questioner not even addressed to the witness -- after which the Court will add some version of, "You may go." As a witness, he must respond to questions not gesturally, by means of shakes of the head or shrugs of the shoulders, but orally "for the record," and efforts on his part to introduce a new topic, or sometimes even to embellish the old are often met with the injunction by either attorney or Court to "Just answer the question."

Of these constraints, those dealing with presence and movement seem generally to be understood and rarely appear in the record as a problem. It is restraints on talking, variances in expectation about discourse rights, that cause the difficulties. Those attorneys with whom I have spoken on the subject insist that they have prepared their witnesses for what is to be expected; witnesses, however, tell another story, and if the number of objections made during witness speech is any indication, and I believe it is, lack of familiarity with what is expected of them as speakers is more the norm.

Discovering a rule is often a matter of first noting its violation, and this holds true for the education of the witness. Not all violations of situational rules of court appear in the record as formal objections, but when an attorney rises from his seat at counsel table in the middle of a question or answer and says, I object, even the least sophisticated witness gets the message that something has gone wrong. He may not, however, understand what that "wrong" was, and this puzzlement sometimes expresses itself explicitly.

The testimony of the first witness to take the stand offers an apt example. During the first five minutes of his testimony, five objections had been made by the opposing (defense) attorney, three of them to the wording of the question and two of them to an answer. Those two came not at what Sacks calls a "possible transition relevance point" in an utterance [Sacks et al 1978:15], but at mid-clause, and had the effect of cutting off the witness's speech. After so much indication that a lot of things were going wrong with this communication process, it is not surprising that the witness became confused, with the following exchanges resulting. The example begins with the occurrence of the fifth objection.

Data 14:3-15:2[1]

Q All right. Can you describe how she was complaining?
DEFENSE: I object to how she was complaining =
PROSECUTOR: Yeah.
DEFENSE: = I think he can testify to what she said --
THE COURT: What she said; what she did, what he observed. Would you ask a specific question, Mr. Prosecutor?
PROSECUTOR (resuming):
Q What did you observe about her complaint?
A Uh, you mean, uh --
Q Did you see her talking to Mr. Jones?
A Right.

. . . . .

Q All right, and what happened after that encounter?

A Well, see, I don't know how, if you want me to, I mean, I'm trying to say, you asked me what I saw --

Q Yeah.

Clearly, the witness felt frustration at not understanding how he was supposed to tell his story.

Courts of law are arenas of argument only unwillingly dramatic, their rules for conduct designed to keep insofar as possible the elements of human emotion suppressed in the apparent belief that justice is best served by dry logic and controlled rhetoric. Fittingly then, in the words of one senior Circuit Court judge, "The language of the courts is not designed to have any attributes of conversation. It is not intended to be pleasing, witty, thoughtful, or considerate. It is not entertainment." [Data80-33I1] But a witness is on the stand to tell his story, and stories, in his experience, are marked by those very attributes which the judge said should not appear in testimony. So while a story is undeniably being told, there are severe limitations on its telling, as the number and type of objections in this trial will show.

There were 32 objections made during approximately two and a half hours of testimony in this trial, falling

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into three categories: hearsay, opinion, and non-responsive. Five of these objections were to the question, twenty to the answer, and seven were functions of the judge. Strictly speaking, the judge hearing a case does not make objections; he rules on them (decides whether an objection will be sustained -- accepted, or overruled -- not accepted). However, judges have been known to sustain an objection never made, as in the following example:

Data 64:2-12

Q Did she remain in the restaurant subsequent to that?
A Well, she went back to her table, and I went into the lounge at that point and it was my understanding that it was --
THE COURT: [Sustain the objection.
Only -- Listen to the question and respond.
THE WITNESS: I'm sorry.
THE COURT: Do not then give a statement of your understanding. You cannot testify as to what someone else told you.

As the Court's last comment makes clear, this is a reaction to a perceived future violation of the hearsay rule. Briefly, and very generally, the hearsay rule is intended to bar in court report of statements made by persons who are not there to be cross examined.[2] That seems fair enough, but for a lay person, X, who is used to peppering his speech with reports of what he has heard

Y say either to X himself or to Z, it is a very difficult habit to break. Of the twenty objections made by the attorneys to witness answers in this trial, 13 of them, well over half, were to hearsay, and some witnesses had more trouble with this change in their discourse rights than others. The first witness, for example, had the following problem in understanding the rule.

Data 12:23-13:8

Q And what happened then?
A Apparently they were, from what I could understand, they were offering her, uh, gratuity --
DEFENSE: Objection to what--
THE COURT: Sustained.
THE WITNESS: They were offering her --
DEFENSE: Objection.
PROSECUTOR:
Q Just what you, just what you observed.
A Okay. Well, all right, uh -- nothing.

That the witness understood neither the codified hearsay rule nor the unwritten rule that when the Court says Sustained, the witness shuts up, was shown by the witness's attempt to recycle (a repetition of, "They were offering her") after what he saw as an interruption. And as Sacks and others have demonstrated [1978], recycling is a perfectly normal repair for a breakdown in the turn-taking system we all expect. In concentrating on the interruption in his turn, an error in communication we all experience every day, he missed the fact

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that the error was a court-imposed one: he could not say what others had said.

Actually, it is surprising that it took so long for defense counsel to make the objection, because as he himself told me in a follow-on interview, "Certain words trigger objections almost automatically." In the first portion of this witness's answer, by using the word 'apparently' and the phrase 'from what I could understand', he gave two early clues that he was going to violate the hearsay rule because, as is customary in structuring past experience, what he had learned from other people's reports had given him his understanding of what had happened. And he had been asked: What happened then? As far as he was concerned, he was simply reporting the event according to the rules of talk he was accustomed to.

Besides expressions like 'it was my understanding,' which lead to hearsay objections, others intimate that an opinion is about to be given in the answer or is being called for by the question. Lay witnesses are, broadly speaking, not permitted to express an opinion,[3] and questions calling for one are objectionable. In this trial, all five objections to the question were to the word 'describe'. The following example is typical.

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Data 11:23-12:3

Q And how, how would you describe her conduct?
DEFENSE: Well, I object to describe.
THE COURT: [Sustained.

When I asked counsel about his objections to the word 'describe', he explained, "The other lawyer is asking for the witness to conclude something because he knows what that conclusion is going to be and he wants to get that out." [Data 80-33I4B] Used in this sense, the attorney's words 'conclude' and 'conclusion' refer to forming an opinion, as the judge made explicit in the following exchange.

Data 17:20-18:6

Q How would you describe the, the, the way she was speaking?
DEFENSE: Well, I object to the form of that question.
THE COURT: Sustain the objection.
PROSECUTION: Your Honor, I think he can state the manner in which he --
THE COURT: [Certainly may, but not as far as an opinion is concerned. Was her voice soft, was it heavy, was it modulated as such? Did she cry? Whatever. Certainly not what would evince a, uh, an opinion.

The witness had trouble following all of this. After the judge's explanation for his ruling, the witness asked:

Data 18:7-10

THE WITNESS: Should I give my opinion?
THE COURT: No, no. Just wait for the next question
THE WITNESS: Oh.

Since forming opinions by way of making judgments and evaluations is something all speakers do automatically and constantly, it is not surprising that difficulty with this basic discourse right caused a lot of objections on the record. Opinion objections could be classified in sociolinguistic terms according to Labov's categories of internal and external evaluation [Labov 1972]. Internal evaluation has as one of its many components the conscious or unconscious use of adjectives and adverbs to let the hearer know how the speaker feels about what he is saying. Obviously, a successful objection to an adjective or adverb depends largely on the judge's discretion, and just as obviously, if all potentially 'objectionable' words and phrases caused attorneys to rise to their feet, no trial would ever be concluded. In the following passage, the same witness who had just been told to wait for the next question, got his question, and his answer is a good example of the escalation of intensity of description to the point at which internal evaluation became objectionable opinion.

Data 18:11-22

PROSECUTOR: (resuming questioning)

Q All right. What was the manner in which she was talking?

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A Well, she seemed like an ir-, uh, a irritated consumer. And, uh, very, she was very vocal. I wouldn't say she was raucus but she was very, very vocal, and, uh, just, uh, very, you know, unhappy. Very complaining, very unhappy. Well, vindictive. I would say vindictive. [x] --
DEFENSE: └Objection.
PROSECUTOR: (resuming)
Q All right. What happened after [x] --
THE COURT: └Sustain the objection now, Mr. Defense.

Later on in the trial another witness managed to do a lot with internal evaluation before the defense attorney finally objected. In this example, even the use of the word 'describe' in the question, which had drawn four objections from defense counsel earlier, slipped through. Words which could be considered objectionable are underlined.

Data 85:1-14

Q How would you describe the way [she] was acting in the dining room?
A Outrageously. I don't know how else to describe it other than --
Q ┌What conduct did you observe?
A Well, her conduct was loud and boisterous, and uncontrollable, uh, unreasonable. She didn't seem to have any poise or integrity, uh --
DEFENSE: Well, Your Honor, I object to these characterizations and move they be stricken.
THE WITNESS: ┌These are my own --
THE COURT: └Sustain the objection.

Denying a speaker the right to use characterization is denying him his right to tell a story in accordance with his expectations. According to Labov, these

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expectations are that a story will include an orientation (answering who? what? where?), complicating action (the plot, or what actually happened), result or resolution, and evaluation (point of view) throughout.[Labov 1972]. This point of view may be expressed not only covertly by means of the internal evaluation just discussed, but may also be done overtly, by means of external evaluation. While internal evaluation may be so subtle that it is difficult to detect in the record (as in choice of word order), external evaluation is easier to spot. In one of its forms, as Labov explains it, "The narrator can stop the narrative, turn to the listener, and tell him what the point is." (emphasis added) [1972:371]

In this trial, there were four examples of explicitly telling the point. The first was of the 'easy to spot' variety.

Data 20:6-9

Q All right. What did she do next?
A Uh, one of the ladies in the party, and I think this is very important -- one of the ladies in the party said she --
DEFENSE: Objection.
THE COURT: Sustained. Just respond to the question, Mr. Witness.
THE WITNESS: Okay. Well -- oh, yeah. The party asked her to leave them alone.

The objection that was made here was to the violation of the hearsay rule: can't report what was said. But the

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Court, after sustaining the hearsay objection, then addressed the problem of a witness characterizing his own testimony as to its importance by saying, "Just respond to the question."

The other three examples of external evaluation all occurred in the testimony of one witness, and each drew objections from defense counsel. The first instance followed hard on the heels of a hearsay objection [Data 64:4-12 preceding] and the Court had just said, "Listen to the next question."

Data 64:15-65:3

PROSECUTOR: (resuming questioning)

Q After the discussion about the check, did you have occasion to see [her] again?
A The next time I saw [her] was about fifteen minutes later. I was coming -- I left the lounge with a drink, uh, for my wife. It was coffee, uh, in my one hand. I walked through the door to the dining room, and that's when I saw [her] again. I was surprised that she was still in the restaurant.
DEFENSE: Objection.
COURT: Sustained.

In spite of having been jumped on simultaneously by both counsel and Court for being 'surprised', the witness could not get the message about this kind of self-expression. A few moments and three objections later, he was then "shocked." By this time the witness was under cross examination.

Data 69-23:70-11

Q And, and did you elaborate on that?
A Yeah, I elabo ated it when I got into the -- well, they turned around and walked away. I was shocked.
Q Well, I'm not asking you --
A That's all I can say: shocked.
THE COURT: I'll strike, I'll strike the comment as far as being shocked.
THE WITNESS: Well, I'd already answered.
THE COURT: One moment now. Wait for the next question.

Since the questioner was doing cross examination, his objection to the opinion of the witness took the form of a direct reproach ("I'm not asking you"), and a lot of things then happened almost simultaneously. The witness, although busy intensifying his external evaluation, heard the attorney's 'objection'. The Court heard them both and responded by sustaining an objection not formally made. In the middle of the Court's ruling, the witness became impertinent in the eyes of the law by not only interrupting the Court, but by 'talking back', a breach of etiquette which brought an immediate reproof from the Court. Because of the cospeech[4] and latching of utterances, this entire exchange took only six and one-half seconds.

Another eight seconds and this witness ran into the third type of objection that occurred during this trial,

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that of non-responsiveness. It is a class of objections which, although not codified as are hearsay and opinion objections, is heard a lot in both trials and depositions as the witness's beliefs about rights of telling clash with what the law sees as relevant or appropriate to dispute processing. In the following exchange, the witness learns that his reasons for doing an act are not always relevant, and he learns it from the Court.

Data 70:14-22

DEFENSE: (resuming cross examination)

Q You went over and pressed the elevator button for them? Is that what your testimony is?
A I held the elevator, because, uh, --
Q For them.
A I held the elevator, uh, so, uh --
THE COURT: He didn't ask you 'because'.
THE WITNESS: For them -- not for them, no. No. For myself.

The next witness to take the stand also ran aground of the relevance problem, this time his expectations about orientation or setting the scene clashing with the Court's notions of a relevant answer.

Data 86:4-13

Q Did you see [this man] afterwards?
A Yes, I did.
Q What did you observe about him at that point?
A Well, uh, I'd gone into another room, a third room, two rooms away from where [the defendant]

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was seated. She was all the way at one end of the restaurant. And I thought they had paid their check and gone---
THE COURT: [Mr. Witness, I think the question was the appearance of, uh, [x] --
THE WITNESS: [The appearance of [K---] was that he was . . .

Objections on setting the scene can be analyzed in both legal and sociolinguistic terms as not meeting the criterion that a response to an utterance (here a question) be heard as being relevant (Grice's maxims of Quantity and Relevance), and the legal view no doubt lays the foundation for the objectionable nature of beginning an answer with an introductory sort of frame.[5] An earlier witness in this trial used this same framing device, and had run into the same type of trouble with the Court. In the following example, notice also the difficulty the witness experiences with Initiator Rights. Not only are his turns broken into by the Court, but for the second time during his testimony on the stand (see Data 18:7-10) he is told in effect not to speak until spoken to.

Data 19:1-10

PROSECUTOR: (resuming questioning)

Q What happened after this account of this table you just referred to?

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A Uh, okay, let me get -- She went up to the table and said, Don't eat here, the bugs -- and the people asked her --
THE COURT: [I don't think we ought then to be repeating the testimony.
THE WITNESS: Okay. [x] All right. [Well, okay, --
THE COURT: [Wait for the next question, sir.

When the Court broke in with his comment on repetition, he referred to the fact that this was the fifth time the witness had used virtually the same phraseology. When I checked the transcript, I found that each time this 'story' was told, it came after an interruption in the witness's narrative flow, and the fact that his answer in the above extract begins with an incomplete request to be allowed to pick up the thread of his tale leads me to believe that he was, in effect, resetting the scene for himself and his hearer so that his answer would make sense. A story without sense, after all, is not a story worth telling.

Summary. I began this paper by suggesting that a trial can be viewed, both in structure and in content, as a narrative-in-pair, two versions of a story conflicting as third, listening parties attempt to resolve a dispute. I now suggest that much of the disruption of the orderly conduct of a trial can be explained by this view.

Disruptions -- objections -- occur as one belief about storytelling clashes with another.[6] Most witnesses who appear on the stand at trial are there for the first time, and while a first-time witness may expect that because of the formality of the situation he is going to have to alter both his behaviour and his speech in some way, he is not prepared, I submit that the data shows, for the degree to which his rights of telling tales are about to be changed. If the witness is not prepared, then, for the new style of telling which the forum demands, the orderliness of his story can be disrupted by any of the three managers of his tale: his own attorney, the opposing attorney, or the Court. Freedom to tell in one's own way can be and is controlled through decisions made by even friendly questioners about length of answers, for instance. "I tried to just let it flow, but they wouldn't let me." said one of the witnesses in this trial [Data 80-33W1]. It can be restricted at any time at the discretion of the judge who is hearing the case. And, as this paper has focused upon, one's telling can be abruptly halted by objections from the other side.

In this trial under study, with its 32 such objections, every witness but one experienced some degree of difficulty,

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and the exception was on the stand for only a minute and a half. Of six other witnesses, three of them together accounted for 12 percent of the objections made, a fourth witness drew 13 percent, and the remaining two accounted for another whopping 72 percent. Viewed in terms of percentage of objections to the numbers of answers given by each witness, these last three mentioned had the highest proportions of trouble restructuring their habits of telling to conform to the rules of the court,[7] and their problems were equally divided between the hearsay and opinion rules.[8] Appendix B sets out these statistics for those readers who are interested.

The remaining 3 percent of the objections belonged to the eighth witness, the defendant. She, like the others, was appearing on a stand for the first time, but on the record, her testimony showed some striking differences. First, in spite of the fact that she testified longer than any other witness, there was only one objection to her testimony. Second, the objection was to hearsay, not opinion, yet this witness was defending herself against the stories of six adverse witnesses who had just preceded her on the stand, and it might have been expected that she would run into

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'opinion' trouble as she sought to make her version more believable than theirs. Third, the one objection made was the only one not sustained by the Court. And fourth, most interesting to me, while the other witnesses gave some narrative-type answers that ranged in length from 70 to 180 words, this witness had one answer alone that consisted of 1,150 words, lasting almost six full minutes without a single sound issuing from her own attorney, from the prosecution, or from the judge. She was the only one, in other words, who was permitted to testify in truly narrative fashion, the only one to approach a successful courtroom style. The reason for her success was, I suggest, that she alone among the witnesses was prepared, in spite of her personal investment in the case, for the manner in which her discourse rights were about to be abrogated. For besides being the defendant, she was also a newly graduated law student. She knew the rules for working within the system.

Implications. What is it like not to be able to work within the system and not quite understand why? How does abridgement of expected rights of telling affect a witness on the stand? What does it feel like to have someone else manage your story? Every answer I have

gotten from witnesses I have interviewed, including the two connected with this trial with whom I was able to talk, used the word 'frustrating.' Every one I spoke to (even experienced witnesses) also admitted to being nervous as well because of the formality of the court, the strain of wanting to remember to say everything thought of before, the acknowledgement that they were involved in a dispute and had to defend their version. But the aspect of frustration, of not being allowed to tell their stories in the way they wanted to, was the theme that appeared over and over again. As one witness in this trial complained, "Maybe I didn't make myself clear. I had something to add and thought they'd ask, but they didn't." [Data 80-33W2]. Another witness, whose telling was interrupted by both counsel and Court, said, "I wasn't as eloquent as I could have been. The testimony wasn't as thorough because of the format." And on the subject of cross examination, he added, "Attorneys can question you and demand answers that can set the scene different ways. A witness has no opportunity to say, 'Hey wait. You're putting things in a different way.'" [Data 80-33W1].

Of course, on cross examination, this is precisely the aim of an attorney in our system who wishes to insist

on his own version of the 'truth.' But the primary tales in trials are told on direct examination, and it is to the advantage of the questioner on direct to present his witness in the best possible light. It is difficult to do that with a first-time entrant into a formal arena of contest who, in addition to nervousness, feels frustration as he runs into rules of speaking he doesn't understand. It may not be so difficult, however, if only one of those factors -- knowing the rules of speaking -- is altered, as the intriguing example of the law student-defendant suggests.[10]

If a trial is, as I propose, a conflict between two narratives, each vying for ratification as true, it is then the business of each attorney to make his story-tellers as believable as possible. Other factors aside, witnesses who know the rules of talk handle their language better, and as one judge whom I interviewed on the subject of discourse rights of witnesses told me, "A witness who handles language well can say the same set of facts but in a vastly different way to a jury or to a judge. [We] are not immune to capable argument." [Data 80-33I1]. There is a lesson to be learned there somewhere.

NOTES

1. In the interests of anonymity, all identifying data have been changed, and "Defense," and "Prosecutor" have been substituted for the attorneys' names, and "Mr. Witness" is substituted for actual surnames. In transcripts, the judge is referred to as THE COURT.

   For transcription devices, see Appendix A.

2. Rules of Evidence for United States Courts and Magistrates, Article VIII, Rule 801. Hearsay.

3. Federal Rules of Evidence, Article VII, Rule 701.

4. Cospeech is my term for any instance of simultaneous speech, without regard for cause or effect. See Walker 1980. Latching is Schenkein's term [1978] for no intraturn pause.

5. It could, as well, have something to do with the Court's responsibility to conduct a speedy trial as laid out in the Federal Rules of Evidence, Rule 611. Mode and Order of Interrogation and Presentation. "(b) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time and (3) protect witnesses from harrassment or undue embarrassment." (Underlining added.)

6. Objections are of course functions of the attorney who is not doing the questioning and will vary according to the personality, skill and intentions of the lawyer involved, as well as being influenced by the presence/absence of a jury. I am in process now of gathering data on the effect of a jury's presence on the number of objections made during a trial.

7. They also impressed me personally as being the most combative and the most emotionally involved in their

testimony. Since all three were bystanders to the event which occasioned the misdemeanor charge, that in itself was somewhat surprising.

8. Had all the infractions been objected to, this division would have shifted slightly in favor of opinion. One witness said, for example, "She wanted attention, I think." [Data 50:21], while another commented that the defendant was talking in an "obnoxious" manner [Data 15:22], neither statement drawing an objection.

9. Both attorneys told me that they had not prepared their witnesses in terms of protocols.

10. It is intriguing to note that although she was found guilty as charged, imposition of the sentence was suspended for three months with the charge to be dismissed if at that time she had been in no more trouble. The case was in fact dismissed at the end of that time.

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APPENDIX A.
TRANSCRIPT NOTATION

The following is a compliation of various notation systems but it is closest to that of the section on Explanation of transcript notation in Jim Schenkein's Studies in the Organization of Conversational Interaction (1978).

Data reference: 19:1-10 refers to page 19, lines one through ten.

[Indicates cospeech

] Indicates latching

Punctuation markings:

, Unmeasured intonation pause signalling continuation
. Sentence-final intonation
? Rising intonation
-- Unfinished utterance
= No break in utterance stream
example: Q Do you think it would be [possible =
A [I don't think so.
Q = for you to identify this?
- Brief unmeasured pause in utterance
... Portions of utterance(s) omitted
[x] Indecipherable utterance

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APPENDIX B.
DISTRIBUTION OF OBJECTIONS
AMONG WITNESSES

Witness	Hearsay	Opinion	Not Responsive	Total
A	5	5	2	12 (38%)
B	1			1 (3%)
C	1			1 (3%)
D		2		2 (6%)
E	5	5	1	11 (34%)
F	2	1	1	4 (13%)
G	1			1 (3%)
H				
Subtotal	15(47%)	13(41%)	4(12%)	32(100%)

APPENDIX C.
ANSWER LENGTH DISTRIBUTION
AMONG WITNESSES

Witness	A	B	C	D	E	F	G	H
Percentage Short Answers*	81	80	70	58	75	57	45	78
Longest Answer	70	160	70	110	180	180	1150	70

*Twenty words or less.

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